

Atty. Dkt. No. 046948-0113 (fka 071402-0115)

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 18-20 are requested to be cancelled without prejudice. Claims 21-23 are being added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-17 and 21-23 are now pending in this application.

In paragraphs 1-3 of the Office Action, the Examiner has restricted the application to two groups. Group I includes claims 1-17 drawn to an ice cream machine and Group II includes claims 18-20 drawn to a method of making ice cream. The Examiner states:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either; (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as one that does not require the adding or mixing steps.

Applicant respectfully traverses the restriction requirement however, to advance prosecution, Applicant has cancelled without prejudice claims 18-20 and hereby elects the claims of Group I. Applicant has added new claims 21-23, drawn to an ice cream machine (Group I). Accordingly, withdrawal of the restriction requirement is respectfully requested. Applicant reserves the right to file divisional applications drawn to the subject matter of Group II.

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Applicant believes that the present application is now in condition for allowance.
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 10-20-04

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